UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

COMMUNITY ACTION AGENCY OF COLUMBIANA COUNTY	
Employer	
and	**CASE NO. 8-RC-16577**
UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC	
Petitioner	

HEARING OFFICER'S REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement approved by the Regional Director on December 8, 2003, an election was conducted on January 9, 2004 among the employees in the following described unit:

> *All full-time and regular part-time teachers, substitute teachers, teacher aides, advocates and bus escorts employed by the Employer under the Head Start program, excluding all confidential employees, managerial employees, and office clerical employees, guards and supervisors as defined in the Act, and all other employees.*

The Tally of Ballots issued after the election shows that of approximately 53 eligible voters, 49 cast ballots, 22 of which were cast for and 23 against the Petitioner. There were four challenged ballots, a number sufficient to affect the outcome of the election.

Thereafter the Petitioner filed timely objections to conduct affecting the results of the election, duly serving a copy thereof on the Employer.

Pursuant to Section 102.69 of the Board's Rules and Regulations, an investigation of the objections was made which resulted in the issuance of an Order Directing Hearing on Objections and Challenges and Notice of Hearing dated March 2, 2004 for the purpose of receiving evidence to resolve certain issues raised by Petitioner's Objections No. 2 and 5 and by the challenged ballots.[1]

[1] Petitioner's Objections No. 3, 6, 7 and the unnumbered "catch-all" objection were withdrawn during the administrative investigation. As a result of that investigation, the regional Director recommended that Petitioner's Objections No. 1 and 4 be overruled. That recommendation was approved by Order of the Board dated April 8, 2004.

Pursuant thereto a hearing was held before me on April 2, 2004, in Cleveland, Ohio. All parties appeared and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. The parties were given the opportunity to submit post-hearing briefs.

At the hearing, the Petitioner requested and I approved the withdrawal of its four challenges as well as its Objection No. 2. As a result of the withdrawal of the challenges, the four challenged ballots were opened and counted on April 8, 2004. A Revised Tally of Ballots issued after the ballots were counted. It shows that of approximately 53 eligible voters, 49 cast ballots, 22 of which were cast for and 27 against the Petitioner. There were no remaining challenged ballots.

The only remaining issue to be decided is Petitioner's Objection No. 5. Upon the entire record of this case, and from my observation of the witnesses, I make the following findings, conclusions and recommendation with respect to that issue.

OBJECTION NO. 5

In its sole remaining Objection, the Petitioner alleges that the Employer "threatened to end its open door policy and stated that management would no longer be able to talk to individual employees if the Union won the election." In his Order Directing Hearing on Objections and Challenges, the Regional Director cited supporting evidence received from the Petitioner regarding a December 5, 2003 Employer letter to employees and Employer statements made during a December 19, 2003 campaign meeting. The Petitioner maintains that this conduct coerced employees and influenced the election results.

At the hearing, the Petitioner introduced the Employer's December 5 letter to employees, without objection. The Employer's Executive Director, Carol Bretz, acknowledged having authored and distributed the letter. The Petitioner objects to the portion of the letter that states, "We will no longer be permitted, under the terms of a collective bargaining agreement, to discuss the terms and conditions of your employment with you or provide you with flexibility under certain situations." On the copy submitted by the Petitioner as its exhibit, Richard Clemens, the Petitioner's Organizer, had underlined that language.

That portion of the letter, however, is prefaced in the same paragraph by the following sentences:

> We are puzzled as to why you may believe you need to be represented by a third party. The CAA has always had an open environment under which employees could come directly to supervisors, the Personnel Director or me, with employment-related problems and concerns. Many of you have done so over the years.

The objected-to language is followed in the same paragraph by the statement, "If a contract is agreed to, the contract will govern your employment terms and conditions and we must adhere to such a contract." The remainder of the letter, which is a page and one-half in length, deals with other campaign issues. It ends with the following language that was underscored in the original by Bretz, "…please know that no one may threaten you to get your vote. This is against federal labor law."

Aside from introducing the December 5 letter, the Petitioner presented witnesses at the hearing who testified about statements that Bretz allegedly made to employees at Employer campaign meetings held on December 17 and 19, 2003.[2]

The Petitioner presented three witnesses to testify about statements allegedly made by Bretz at the December 17 meeting. The first witness, Sharon Frame, testified that Bretz's statement to the employees was essentially the same as in the December 5 letter. She did not

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[2] At the hearing, the Employer objected to the introduction of testimony with regard to the December 17 meeting. It maintained that this evidence was irrelevant because the Regional Director's Order made no mention of it and rather limited the hearing to the issues of the December 5 letter and the December 19 meeting. I allowed introduction of the evidence concerning the December 17 meeting while reserving judgment on whether it is relevant. I asked the parties to address the issue in their post hearing briefs and the Employer offered argument while the Petitioner did not.

In arguing that the evidence concerning the December 17 meeting should be excluded, the Employer relies on the Board's holdings in **Precision Products Group, Inc. 319 NLRB 640 (1995)** and **Iowa Lamb Corp., 275 NLRB 185 (1985)**. In the former case, the Board overruled the recommendation of the hearing officer that an election be set aside because the latter considered evidence of objectionable conduct that was related to an objection that had previously been withdrawn by the petitioner. The Board further noted that the objectionable conduct was not specifically alleged in the remaining objections nor was it cited in the Regional Director's order. In **Iowa Lamb Corp.**, the Board likewise found that a hearing officer erred by considering an issue that was not alleged in the objections nor identified by the Regional Director in his report.

The Employer maintains that since the December 17 meeting was not specifically mentioned in the Regional Director's Order in the instant matter, evidence concerning this issue should be excluded. It claims that it did not have notice that the December 17 meeting was an issue in the hearing and thus was unable to prepare evidence. I disagree.

As noted above, Objection No. 5 speaks generally about the Employer's alleged threat to end its open door policy. It does not cite specifics acts but generally puts the Employer on notice of the nature of the issue. The Regional Director's Order cites the December 5 letter and the December 19 meeting but only in terms of evidence offered to support the Objection. It does not limit the scope of the hearing to those events. Indeed, at the hearing, the Petitioner limited its offer of evidence concerning the December 17 meeting to what was said at that session about the open door policy. Furthermore, the evidence offered was that Carol Bretz was the Employer's spokesperson at that meeting as well as at the meeting of December 19. The Employer did not ask for additional time to prepare to meet the Petitioner's testimony concerning December 17. Moreover, it had every opportunity to question Bretz, its own witness, about her statements on December 17. In fact, the Employer did ask Bretz questions about that meeting.

Thus, unlike the facts in **Precision Products Group, Inc., supra,** the testimony here concerning the December 17 meeting was closely related to the objection before the hearing officer. The objection concerned the fate of the open door policy and that was the subject of the testimony. In addition, the Employer was not prejudiced by the testimony because its witness was available to respond and in fact was asked questions by the Employer about the December 17 meeting. Finally, if the Employer feared prejudice to its case, it could have requested additional time to prepare evidence in response. It did not. On the basis of these considerations, I find that the evidence offered by the Petitioner concerning statements made by Carol Bretz at the December 17 campaign meeting are relevant and should be admitted.

attempt to reiterate Bretz's exact words. Frame's understanding of what Bretz said was that if the Union became the employees' representative, employees would not be able to talk directly to their supervisors about their terms and conditions of employment. They would have to go through the Union first.

Cora Lewis, the Petitioner's second witness who attended the December 17 meeting also could not recall Bretz's exact words. She testified that Bretz said words to the effect that there would no longer be an Employer open door policy and thus employees would have to go to the Union first rather than come directly to Bretz. In answer to a question from the Employer's Counsel, Lewis said that she understood Bretz to be saying that any employee concerns or grievances would have to go through the Union if it was selected as the employees' representative. The Petitioner's final witness concerning December 17, Debra Cook, heard Bretz to ask why the employees would want a third party because then the employees would not be able to go to her or the Personnel Director.

The Petitioner called two witnesses to discuss Bretz's statement to employees at the December 19 meeting. Mary Lee Rush described Bretz's statement on the issue as follows:

> She explained that we would be losing the current open door policy because the Union would be stepping in as a mediator. She said we would lose our ability to go to her personally because we would have to have a Union representative there. And she said that she didn't feel that this particular Union was to our benefit.

Sharon Mann, provided the following description of Bretz's comments:

> …if we voted the Union in that – uh, we would no longer be able to go to our supervisors and to – if we had a problem, that we would have to basically, to talk to, you know, the Union. We'd have to go through different steps to get our problems or questions answered.

In her testimony, Carol Bretz made only minor references to the meeting of December 17 but offered the following description of her comments to the December 19 meeting:

> I explained to them that if and when a contract was in place that the agency was legally bound by the contract. And we could not go outside the parameters of that contract. So if an employee came to us and wanted something that wasn't in the contract, we would not be able to do that.
>
> I didn't state to people that if the union came in I could no longer talk to them or they couldn't come to us. It's only in regards to the issues of terms and conditions of employment that we would be bound by the contractual agreement. And that if it wasn't in the contract we wouldn't be able to do anything.

> I said, "If you come to me with a request for something that is not within the parameters of the contract, we can't do it, if it effects[sic] your terms and conditions of your employment."

Bretz said that her message at the meeting was that if an employee wanted a benefit that was not in the labor agreement, the Employer would be unable to do that.

With respect to the issue of credibility, it must be noted that none of the Petitioner's witnesses had a good recollection of what was said by Bretz concerning the potential change in the Employer's open door policy. Concerning the December 17 meeting, the witness for the Petitioner with the best recollection was Sharon Frame. Her testimony, however, closely tracks that of Bretz. Indeed, Frame stated that Bretz's comments to the meeting paralleled the content of the December 5 Bretz letter to employees. The only consistent testimony that emerges concerning December 17 then is that Bretz told the employees that with respect to matters concerning grievances or terms and conditions of employment, they would first have to go to the Union before coming to management.

The testimony offered by the Petitioner concerning the December 19 meeting was short, vague and inconsistent. At best, Rush and Mann create the suggestion that Bretz advised employees that if problems arose they would first have to take them to the Union. The testimony of Bretz was more complete and consistent. She credibly testified that she told employees that if the Union came in, the Employer would be bound by the terms of a labor agreement. She added that with respect to all matters outside the agreement, the Employer would no longer be able to resolve those issues directly with the employee. I credit Bretz's version of what she said at the December 19 meeting.

Given these facts, the issue to be decided is whether Bretz's statements in the December 5 letter and in the two employee meetings were objectionable by threatening a loss of access to management (the open door policy) if the Union were to win the election. I find that these statements were not objectionable.

The issue in this case was squarely addressed by the Board in **Ben Venue Laboratories, Inc., 317 NLRB 900 (1995)** and **FGI Fibers, Inc., 280 NLRB 473 (1986)**. In the former case, the employer told employees the open door policy would no longer exist if the employees voted to unionize." **At 900**. In the latter case, the Board held there was no violation where an employer told employees that "there would not be any more open door policy if the Union was voted in because they'd have to go through union procedures, like grievances." In assessing these statements, the Board concluded that they did not constitute unlawful threats.[3] The Board noted that it had previously held that an employer does not violate the Act by informing employees that unionization will bring about a change in the manner in which employer and employee deal with each other, **Tri-Cast, Inc., 274 NLRB 377 (1985)**, or by statements informing employees of a loss of access to management, **Koons Ford of Annapolis, 282 NLRB 506 (1986)**.

[3] See also, **Sunrise Health Care Corporation d/b/a Mediplex of Stamford,334 NLRB No. 111 (2001); Vencor Hospital-Los Angeles,324 NLRB 234 (1997).**

I find that the statements made by Bretz in the December 5 letter to employees and at the December 17 and 19 employee meetings are indistinguishable from those found permissible by the Board in the above-cited cases. Her statements were no more than an attempt to describe to employees, in layperson's terms, the effect that Section 9(a) representation would have on the Employer's policies. Bretz sought to explain that the exclusive representation status of the Petitioner meant that the Employer would be bound to follow the terms of a collective bargaining agreement and avoid dealing directly with employees on issues not governed by the labor agreement. Thus, the direct dealing of the past would have to come to an end.

Furthermore, there is no credible evidence that Bretz misstated the language of the provisos to Section 9(a) of the Act. Those provisions assure that individual employees or groups of employees may take up grievances directly with management as long as the labor agreement is not violated in the process and as long as the bargaining representative is given an opportunity to be present. Bretz's remarks did not contradict those provisos. She merely underlined the fact that if the Petitioner became the bargaining representative, employees would no longer be able to directly negotiate terms and conditions of employment with the Employer without notice to or involvement by the Petitioner.

CONCLUSION AND RECOMMENDATION

In conclusion, based on the record as a whole, I find that the Employer did not engage in objectionable conduct by its letter to employees dated December 5 or by Bretz's statements to employees at the meetings of December 17 and 19, 2003. Petitioner's Objection No. 5 is without merit and I recommend that it be overruled. I further recommend that the Board issue a Certification of Results of the election.

In accordance with Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, any party may file with the Board an original and seven copies of exceptions to this report within fourteen (14) days of the date of issuance of the report. Immediately upon the receipt of such exceptions, the party filing shall serve a copy upon the other party and upon the Regional Director. If no exceptions are filed thereto, the Board may, upon the expiration of the period for filing such exceptions, adopt the recommendations of the hearing officer or make other disposition of this case.

Dated at Cleveland, Ohio this 26th day of April 2004.

/s/ Allen Binstock

Allen Binstock
Hearing Officer
National Labor Relations Board
Region 8